REMARKS

Claim 1 is pending.

Applicants note that the restriction is moot by amendment, but do not concede the point regarding "40 pages" of claims and large number of hits. The broadest claim, claim 1, is roughly four lines long. It is broad, and that is because the Applicants are pioneers of this technology. For example, Applicants note that all art cited is their own. If Claim 1 was free of the art, all subsequent claims would be too. Yet the Examiner's restriction would have required Applicants to file case upon case to adequately protect their innovation. Claim 1 is a linking claim, and no restriction between inventions was proper in that case.

Claims 2-6 are canceled without prejudice or disclaimer. The rejections under 35 USC §112, second para. and 35 USC §112, first para. are now moot.

Claim 1 stands rejected under 35 USC 102(e) as anticipated by Rajopadhye et al. (US Pat. No. 6,322,770). The Examiner is mistaken about the version of 102(e) to apply. MPEP §2136 states that:

> Revised 35 U.S.C. 102(e), as amended by the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501 (1999)), and as further amended by the Intellectual Property and High Technology Technical Amendments Act of 2002 (Pub. L. 107-273, 116 Stat. 1758 (2002)), **applies in the examination of all applications, whenever filed**, and the reexamination of, or other proceedings to contest, all patents. Thus, the filing date of the application being examined is no longer relevant in determining what version of 35 U.S.C. 102(e) to apply in determining the patentability of that application, or the patent resulting from that application. **The revised statutory provisions supersede all previous versions of 35 U.S.C. 102(e)** and 374, with *only one exception*, which is when the potential reference is based on an international application filed prior to November 29, 2000 (discussed further below).

Emphasis added. The present application is based on a US provisional, so the exception does not apply. Moreover, US Pat. No. 6,322,770 and the present application have the same

priority date (Dec. 18, 1998), so the former is not prior art. Thus, the rejection is improper and must be withdrawn.

The obviousness type double patenting claim regarding US Pat. No. 6,322,770 will be addressed upon allowance of claim 1, and a suitable terminal disclaimer will be submitted if necessary.

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/Brian J. Hubbard/
Registration No. 45,873

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439